IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No.1284 of 2002.

Date of decision:02.03.2006.

H.R.T.C. & Others. **….Petitioners.**

Versus

Puni Chand **….Respondent**

Coram

The Hon'ble Mr.Justice K C Sood,J.

Whether approved for reporting ?[1]

For the Petitioners: **Mr.Ashok Chaudhary, Additional Advocate General.**

For the Respondent: **Ms.Ritta Goswami vice Mr.V.D. Khiddta, Advocate.**

K C SOOD,J.(Oral).

On a Reference made by the Government of Himachal Pradesh, the Presiding Judge, H.P. Labour Court, Shimla, by its award dated 4th May, 2002 held that termination of the services of the respondent Puni Chand was illegal unjustified. The Presiding Judge directed his reinstatement from the date of his termination with continuity in seniority and back wages to the extent of 20% from the date of his termination.

Dis-satisfied, the petitioners, H.R.T.C. and Others, are in this petition under Article 226 read with Article 227 of the Constitution of India.

Few facts:

The respondent, hereinafter referred to as the "workman", in his claim petition alleged that he was appointed as Conductor in Baijnath Depot by the employer H.R.T.C. and thereafter was transferred to Pathankot Depot

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement?***

and continued to work at that place till November, 1989 and his services were terminated in the year 1989. Fresh appointment was given to him as Conductor in Rohru Depot in the year 1990, but was again transferred from Rohru to Hamirpur Depot in 1991 and thereafter to Baijnath. His services were terminated on Ist December, 1992 on account of embezzlement and having not issued tickets to the passengers.

The case of the workman was that several other Conductors who were engaged after him were retained in the service while he was dis-engaged from the service. According to the employer-Corporation, the workman was engaged and was put on probation for one year. His work and conduct was not found satisfactory, therefore, period of probation was extended for another period of one year. Even during this extended period of probation he was found to be involved in 14 cases of ticket-less travelling. His work and conduct too was unsatisfactory. It was for this reason that he was discharged from his service during the probation period.

Learned Presiding Judge of the Labour Court took a view that no evidence was produced by the petitioner-Corporation that the workman was on probation and he was discharged from services. Apparently, the learned Presiding Judge of the Labour Court in her wisdom had not gone through the pleadings of the parties and reached to this conclusion without any foundation and contrary to the pleadings before her.

In the statement of claim before the Labour Court the workman in paras 7 and 8 pleaded thus:

> *"7. That admittedly the petitioner was given fresh appointment in March, 1990 at Rohru Depot after his services were terminated in November, 1989. The fresh appointment was on probation".*
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> *"8. That the petitioner submits that one Mitter Dev referred to above whose services were also terminated like the petitioner during the probation period, were taken back by the respondent-Corporation as conductor. This is being said for the simple reason that the petitioner has been denied his entry in the respondent-Corporation as a conductor which shows that he is being discriminated qua the similarly situated persons, who have been taken back in the respondent-Corporation after their services were terminated during the probation period".*

The employer in its reply admitted that the workman was given fresh appointment in March, 1990 at Rohru Depot and this appointment was on probation. In view of the admitted position by the parties that the workman was discharged from the services during probation period, the conclusion reached by the learned Labour Court that there was no evidence to show that the workman was discharged from services when he was on probation is manifestly wrong and dehors the pleadings. The Presiding Judge evidently did not bother to go through the pleadings.

Faced with the situation, learned counsel for the workman relying upon ***Udit Narain Singh Malpaharia*** vs.

Additional Member Board of Revenue, Bihar and another, AIR 1963 SC 786, contends that the Tribunal or Authority whose order is sought to be quashed are necessary parties when such orders are challenged in a writ petition. The contention again is fallacious.

A Constitutional Bench of the Supreme Court in a latter judgment in ***Syed Yakoob*** vs. ***K.S. Radhakrishnan and others, AIR 1964 SC 477,*** in para-19 observed:

> *"It may be that in such proceedings, the Authority and the Appellate Tribunal are proper and necessary parties, but unless allegations are made against them which need a reply from them, it is not usual for the authorities to be represented by lawyers in Court. In ordinary cases, their position is like that of courts or other Tribunals against whose decisions writ proceedings are filed; they are not interested in the merits of the dispute in any sense, and so, their representation by lawyers in such proceedings is wholly unnecessary and even inappropriate".*

In the present case the Presiding Judge of the Labour Court was not a necessary party, more-so, when the Presiding Judge is a Judicial Officer of the rank of the District Judge.

The Apex Court in ***Savitri Devi*** vs. ***District Judge, Gorakhpur and others, (1999)2 SCC 577,*** deprecated the practice to array any Judicial Officer as party in the writ petition before the High Court and the Supreme Court. The following observations of the Supreme Court in para-14 are apposite:

> "14.Before parting with this case, it is necessary for us to point out one aspect of the matter which is rather disturbing. In the writ petition filed in the High Court as well as the special leave petition filed in this Court, the District Judge, Gorakhpur and the 4th Additional Civil Judge (Junior Division), Gorakhpur are shown as respondents and in the special leave petition, they are shown as contesting respondents. There was no necessity for impleading the judicial officers who disposed of the matter in a civil proceeding when the writ petition was filed in the High Court; nor is there any justification for impleading them as parties in the special leave petition and describing them as contesting respondents. We do not approve of the course adopted by the petitioner which would cause unnecessary disturbance to the functions of the judicial officers concerned. They cannot be in any way equated to the officials of the Government. It is high time that the practice of impleading judicial officers disposing of civil proceedings as parties to writ petitions under Article 226 of the Constitution of India or special leave petitions under Article 136 of the Constitution of India was stopped. We are strongly deprecating such a practice".
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> ***(emphasis given)***

It is settled position of law that the Presiding Judge of the Labour Court and for that reason any Judicial Authority is not necessary party unless malafide is alleged

against such Authority. In the present case malafide is not alleged against the Presiding Judge of the Labour Court. It is only that the present petitioner-employer had a grievance against the award passed by the Presiding Judge of the Labour Court for the redressal of which the employer invoked the writ jurisdiction of this Court.

For the reasons recorded above, the writ petition is allowed. The impugned award made by the Presiding Judge, H.P. Labour Court, Shimla, is set aside. The claim of the respondent-employee is dismissed. The Reference shall stand answered accordingly.

No costs.

March 2, 2006. **(K C Sood)**
(aks) **Judge.**